



Miguel Agustín Pro Juárez, A.C.

Memorandum

To: The Human Rights Committee

From: The Miguel Agustín Pro Juárez Human Rights Center, Mexico City

Date: May 6, 2009

Re: Suggested questions for the List of Issues to be taken up during the upcoming examination of the 5th periodic state report of Mexico

Who we are

Founded in 1988, the Miguel Agustín Pro Juárez Human Rights Center (Center Prodh) defends and promotes respect for human rights in Mexico, with a focus on the most marginalized and vulnerable social groups in the country, such as women, indigenous communities, migrants, and victims of social repression. Since September 2001 we have enjoyed Consultative Status before the Economic and Social Council of the United Nations. We are also an Accredited Organization before the Organization of American States.

Since its creation, Center Prodh has focused on the defense and promotion of civil and political rights relating to life, physical integrity, and personal security. In 2002, Center Prodh incorporated into its activities the promotion and defense of economic, social, cultural, and environmental rights through paradigmatic cases of rights violations. Our daily activities include monitoring and analysis of the human rights situation in Mexico; documentation of cases of paradigmatic violations against victims of social repression, women, migrants, and indigenous groups; national and international litigation; education and training of civil society groups in the defense of human rights; and publication of case information and human rights reports. Our reports, as well as information and news about our cases, can be found at www.centroprodh.org.mx.

Suggested questions for the Human Rights Committee's List of Issues to be taken up during the 5th periodic examination of Mexico

1. Use of military jurisdiction to investigate and try cases of human rights violations

Suggested question:

- a. **Given that Mexico's Code of Military Justice specifies that military jurisdiction will be used to investigate and try all crimes committed by soldiers while on duty, including human rights violations, how will Mexico ensure that human rights violations cease being investigated or tried in military jurisdiction?**

Background:

In 2008, as the Mexican government continued to deploy tens of thousands of soldiers to carry out policing tasks throughout numerous states, Mexico's National Human Rights Commission received 1230 reports of human rights violations committed by soldiers, representing an increase of over 600% since the year 2006, when current Mexican President Felipe Calderón took office.

A key factor perpetuating these military human rights violations is the extremely high level of impunity for such abuses, due in part to the consistent use of military jurisdiction to investigate and prosecute cases of human rights violations committed by members of the armed forces. This use of military, as opposed to civil, jurisdiction serves to restrict the investigation of military human rights crimes, leaving such cases to be tried by judges who lack independence and impartiality.

Article 13 of the Mexican Constitution establishes that "military jurisdiction subsists for crimes and offenses against military discipline..." However, "military discipline" is defined by the army, in Article 57 of its Code of Military Justice, to include all crimes committed by members of the armed forces "while on duty or due to acts associated with this duty." This overly broad definition conflicts with Article 13 of the Constitution and with international human rights law, in particular the guarantees of due process enshrined in the ICCPR.

Numerous UN special mechanisms and treaty bodies have explained that Mexico's use of military jurisdiction in human rights cases is not permissible under international law. These include the Special Rapporteur on Torture, the UN Committee Against Torture, the Special Rapporteur on Violence against Women, the Special Rapporteur on the Rights of Indigenous Peoples, the Special Rapporteur on Extrajudicial Executions, the Special Rapporteur on the Independence of Judges and Lawyers, and the Working Group on Arbitrary Detention.¹

¹ *Report of the Special Rapporteur, Mr. Nigel Rodley*, E/CN.4/1998/38/Add.2, Jan. 14, 1998, para. 86 ("Military personnel appear to be immune from civilian justice and generally protected by military justice") and para. 88j ("Cases of serious crimes committed by military personnel against civilians [should] be subject to civilian justice"); Committee Against Torture, *Concluding Observations*, CAT/C/MEX/CO/4, Feb. 6, 2007, para. 14 ("The State party should ensure that cases involving violations of human rights... committed by military personnel against civilians, are always heard in civil courts, even when the violations are service-related"); Committee Against Torture, *Report on Mexico Produced by the Committee Under Article 20 of the Convention*, CAT/C/75, May 25, 2003, para. 220g ("The application of military law should be restricted only to offences of official misconduct and the necessary legal arrangements should be made to empower the civil courts to try offences against human rights"); *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk*, E/CN.4/2006/61/Add.4, Jan. 13, 2006, para. 69a(vi) ("Ensure... that all cases of violence against civilians committed by military personnel are investigated by civilian authorities, prosecuted by civilian authorities and adjudicated by independent and impartial civilian courts"); *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen*, E/CN.4/2004/80/Add.2, Dec. 23, 2003, para. 90 ("Any offence by a member of the military committed against a civilian should without exception be heard in the civil courts"); *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir*,

Center Prodh is currently defending a paradigmatic case before Mexico's Supreme Court that challenges the use of military jurisdiction to investigate and try human rights violations. The case arose from a legal appeal filed on behalf of one of four civilian victims arbitrarily executed by soldiers in the community of Santiago de Caballeros, Sinaloa state, in March 2008, a case documented by Center Prodh. The case challenges the use of military jurisdiction to investigate and prosecute the soldiers implicated in this grave human rights violation, arguing that Mexico's Code of Military Justice is unconstitutional and violates international human rights standards.

In the context of this case and of rising military human rights violations in the country, as well as the questions and recommendations that arose during Mexico's Universal Periodic Review in February 2009 (during which 7 states recommended that Mexico properly limit the use of military jurisdiction to exclude human rights crimes from its sphere of competence), this issue is currently receiving increased attention on the national level, making this a particularly vital time for the Human Rights Committee to raise it with the government during its examination of the latter's periodic report.

2. Justice for women raped by police in San Salvador Atenco

Suggested question:

a. Given that more than three years have passed without a single prosecution for rape or torture in the high-profile case of the women of San Salvador Atenco, what concrete steps is the government taking to charge and prosecute the police who committed these acts?

Background:

On May 3 and 4, 2006, a small group of local flower growers clashed with police forces in the town of San Salvador Atenco in the state of Mexico. With the support of the local social movement People's Front in the Defense of Land (FPDT), the flower growers protested the forced relocation of flower stalls by the municipal government. Refusing to negotiate with the FPDT, authorities ordered over 2,500 members of state and federal police forces to surround the town and suppress the protest. Throughout the confrontation, police officers indiscriminately assaulted and detained both protesters and by-standers not involved in the conflict. Two individuals, aged 14 and 20, were killed as a result of police brutality and the

E/CN.4/2000/3/Add.3, Nov. 25, 1999, para. 107f ("Initiate reforms aimed at ensuring that all persons accused of human rights violations, regardless of their profession, are tried in ordinary courts"); *Report of the Special Rapporteur on the independence of judges and lawyers, Dato'Param Kumaraswamy*, E/CN.4/2002/72/Add.1, Jan. 24, 2002, para. 192d ("With regard to the military and military courts: Crimes alleged to be committed by the military against civilians should be investigated by civilian authorities...") Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention on its Visit to Mexico*, E/CN.4/2003/8/Add.3, Dec. 17, 2002, para. 72f ("as the forced disappearances committed by the military in the past constitute serious human rights violations, they should be dealt with by the ordinary civil courts").

police arbitrarily detained more than 200 other people, beating the detainees and forcing them to lie piled on top of each other in the buses used to transport them to a detention center.

The victims included 47 women, dozens of whom were systematically tortured by Mexican police through rape and beatings while blindfolded during the journey to the detention facility. Center Prodh documented the cases of eleven women, on whose behalf we are defending this case at the national level (requesting prosecution of the perpetrators by Mexico's federal Special Prosecutor for Crimes against Women) and internationally (having filed a petition before the Inter-American Commission on Human Rights).

Both the use of sexual torture against detained women and the use of excessive force in response to social protest in this case are representative of more widespread practices by Mexican security forces. In the vast majority of such cases, however, these violations go unpunished.

In the case of Atenco, no police officer has been charged with either rape or torture. This despite the recommendations of the Committee Against Torture (CAT/C/MEX/CO/4) and the CEDAW Committee (CEDAW/C/MEX/CO/6), both of which expressed concern that the federal Special Prosecutor for Crimes against Women has not assumed full jurisdiction in this case and then recommended that the appropriate authorities prosecute and punish the perpetrators.

State-level authorities have instead opted not to investigate for the crime of torture and have brought minor charges, such as 'abuse of authority,' in just a handful of cases, none of which has yet resulted in a final sentence. Federal authorities have brought no charges whatsoever. Considering that hundreds of police participated in the operative, abusing and torturing scores of civilians, it is clear that state authorities have failed to carry out an effective investigation or to act against the vast majority of the perpetrators, let alone those who planned and oversaw the operation. Mexico's Supreme Court carried out an investigation into the abuses which confirmed that police had sexually abused women in San Salvador Atenco; Mexico's National Human Rights Commission confirmed this same fact after documenting the case, and recommended that authorities investigate and prosecute the perpetrators for torture. Yet after more than three years, the women of Atenco continue to seek justice.

Because of the very high profile of this case in national media and among international human rights bodies, it is particularly crucial that the Mexican State deliver justice for these abuses, setting a precedent that sexual violence of rape of women by state security agents will not remain unpunished.

3. Discrimination against and unjust imprisonment of indigenous community members

Suggested question:

a. Given examples of institutional discrimination against and unjust imprisonment of indigenous community members, exemplified by the case of Doña Jacinta Francisco Marcial, what concrete steps will Mexico take to ensure that its criminal justice system ceases discriminating against indigenous populations?

Background:

On December 19th, 2008, Jacinta Francisco Marcial, a ñhã-ñhú (Otomí) indigenous woman, was unjustly convicted, together with Alberta Alcántara and Teresa González, of having kidnapped six armed agents of the Federal Investigation Agency (AFI, for its initials in Spanish) on March 26th, 2006 in the indigenous community of Santiago Mexquititlán, municipality of Amealco, Querétaro state. Jacinta was sentenced to 21 years in prison and has spent more than two and a half years in prison already (having been detained more than two years prior to her conviction). She was convicted based only on the fact that she appears in the background of a photo taken by a newspaper, in which Jacinta is seen walking past a group of town vendors who are negotiating with a group of AFI agents following the unjustified confiscation of their merchandise, for which the AFI agents had promised to indemnify them.

Although no kidnapping occurred that day and although Jacinta was not involved in any way with the AFI agents, she was arrested months later under a false pretext (she was told she was being taken in for questioning regarding the logging of a tree) and subsequently convicted of kidnapping AFI agents. This arrest was clearly a reprisal against the town vendors for demanding their right to compensation following the confiscation of their goods.

In view of the total lack of evidence against her and the manifest injustice in this case, Center Prodh took on Jacinta's defense in January 2009 and appealed the indigenous woman's conviction. The appeal came before the Unitary Tribunal of the 22nd District, presided over by judge Hanz Eduardo Muñoz López.

The numerous flaws in the trial that led to her conviction provide more than sufficient reason to declare her innocent and release her from prison. However, in his resolution issued on April 7th, judge Muñoz López instead ordered a retrial; that is, he returned the case file to the 4th District Judge in Querétaro, Rodolfo Pedraza Longhi, so that the prosecutors can present the case all over again. With this resolution, the same authority that unjustly condemned Jacinta to serve a prison sentence of more than 20 years will once again have her liberty in its hands.

Jacinta Francisco Marcial's trial exemplifies the type of discrimination that characterizes the prosecution of indigenous people, especially those who are women and live in

conditions of marginalization. Worth noting in this regard is that during Doña Jacinta's original trial, she was not provided with a translator who explained to her what was occurring in the process; as she does not speak fluent Spanish, she was thus unable to follow her own trial. The right to a translator who translates all parts of the trial is not adequately guaranteed and observed under state codes of criminal procedure such as that of Querétaro state.

This case shows that the judicial system is used to repress indigenous communities' expressions of protest or social discontent in the face of discrimination and abusive acts committed against them by state agents. In this case, the judicial system targeted an innocent bystander, depriving her of her liberty and many aspects of her life, simply to send a message of repression to her community.

For further information on any of the cases described or questions suggested above:

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